IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1189 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SARPANCH AND OTHERS

Versus

JAGDISH RAMJIBHAI

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Appearance :
MR HS MUNSHAW for the petitioners

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 28/02/2006

ORAL JUDGMENT

This Revision Application is preferred by the original defendants of

Regular Civil Suit No. 1605 of 1998 challenging the judgment and order dated 17.5.1999 passed by learned Extra Assistant Judge, Vadodara in Civil Misc. Appeal No. 88 of 1999.

The respondent herein filed Regular Civil Suit No. 1605 of 1998 before the Civil Judge, Senior Division, Vadodara for declaration and injunction. In the aforesaid suit, an application, Exh.5 was pressed into service for an order restraining the defendants from making construction which may affect the rights of the plaintiff. The trial Court rejected the same thereby vacating the previous ad-interim injunction. Against the said order, the original plaintiff preferred Civil Misc. Appeal No. 88 of 1999 before the District Court. The appellate Judge allowed the said appeal and confirmed the ad-interim injunction granted by the trial Court earlier till the final disposal of the suit with a specific observation that the the land out of survey No. 888 admeasuring 20 ft. wide should be left open for the plaintiff's use as an approach road and the defendants were restrained from making or allowing to make any construction on lower portion of survey No. 888 till the decision of the suit.

Mr. Mushaw, learned advocate for the petitioners submitted that the appellate Court has committed an error in rejecting the appeal. However, considering the fact that the Revision Application is filed at an interim stage, this revision, in view of the amendment in section 115, CPC, is not maintainable as it cannot be said that by the aforesaid order the entire proceedings are terminated. Even otherwise, it cannot be said that the order of the appellate Court suffers from any jurisdictional error. In view of the judgment of the Honourable Supreme Court in Hindustan Aeronautics vs. Ajit Prasad, AIR 1973 SC 76, even otherwise also this

Revision cannot be entertained. Hence the Revision is rejected.

Considering the facts and circumstances of the case, the trial Court is directed to decide Regular Civil Suit No. 1605 of 1998 at the earliest, and in any case within a period of six months from today.

Registry to send writ of this order forthwith.

Rule is discharged. No order as to costs.

[P. B. MAJMUDAR, J.]

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